

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,018
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a forty-eight-year-old woman with a tenth grade education who has poor reading and writing skills. She is the mother of five children and has never worked outside of her home. She currently cares for a three-year-old adopted child with whom she lives, along with her husband, who is a farmer, a teenage child and a mentally disabled adult child.

2. The petitioner suffers from chronic low back pain and stiffness and pain in all her major joints, especially her knees, ankles and hands. Her condition has been aggravated by the increased activity of caring for a small child. She also suffers from asthma which is fairly well controlled by medication.

3. The petitioner still drives and does some light shopping and housekeeping chores but is in pain all of the

time. All but the lightest lifting and household chores are now performed by other household members. She receives significant help in caring for the three-year-old from her husband, who is home for two and a half hour lunch breaks, and her high-school age daughter after school. Her ability to perform tasks for sustained periods is severely limited by pain and joint stiffness. She cannot stand, walk or sit for more than a few minutes at a time due to pain, leg cramps and swollen ankles. It takes her well over an hour to finish simple tasks like washing the breakfast dishes. Her left hand is weakened by stiffness to the point that she cannot grasp well and frequently she drops pans and other heavy objects. Because of her decreased strength and mobility, she has moved her bedroom downstairs (she cannot climb stairs), and her husband has put in ramps for the few steps left in the home, put her clothes dryer up on blocks, and built her a raised vegetable garden so she does not have to bend over which causes her great pain. She walks with a cane and becomes very tired even from short trips of one half hour or less. The petitioner's testimony is found to be very credible.

4. The petitioner's treating physician is a general practitioner who has seen her for about nine years. In the last two years she has been to see him frequently for back pain and knee and ankle swelling. He has diagnosed her as having early osteoarthritis based upon her reported symptoms, an X-ray showing mild scoliosis, and his own

observation of swollen ankles and discomfort upon range of motion testing in almost every major joint. He has prescribed Tylenol, Ibuprofen, Clinoril, Naprosin, and Feldene for the swelling and pain but he does not feel she gets much relief from the medication. He has prescribed medication, rest and regular exercise. It is his opinion that the petitioner cannot do a job requiring sitting for 6-8 hours, lifting of up to 10 pounds, and some standing and walking. He also feels that any attempts to work would further aggravate her condition.

5. A consulting examiner-physician who saw the petitioner in March of 1990 noted that she had swollen ankles, that her skin was discolored over the left side of her thoracic cage due to pressure when she sits and that her left dorsal spine was tender. He found her range of motion to be normal but noted she had scoliosis of the spine of a mild to moderate degree with accompanying low back pain. He also believed she had leg pains due to the back deformity which caused an improper redistribution of her weight.

6. A second consulting examiner saw her in March of 1991. He noted that she had mild mid-thoracic scoliosis but a good range of motion in all joints except the right hip and knee. He diagnosed her as having mild scoliosis and lower extremity arthritis which he felt only minimally affected her ability to work. He did not think her condition should interfere with her ability to do "light" work. He stated that, "I would further investigate this [by

tests] only if this would influence her disability decision."

7. There is little disagreement among the three doctors who saw the petitioner as to the fact that X-rays and examinations have revealed the probability that she has a curvature of the spine and osteoarthritis of her hip and knee and perhaps other joints. The disagreement exists as to the severity of the resulting loss of function. The treating physician's opinion as set out in paragraph No. 4 above is found to be most accurate as he has had the most opportunity to observe the petitioner and his testimony is most consistent with the petitioner's own credible testimony. The consulting physician's report (found in paragraph No. 6 opined a milder functional interference (light work) based, upon only one interview and without the need of further tests which he felt he might need to give a definitive opinion. That opinion is found to thus be less reliable and not of sufficient weight to overcome the opinion of the treating physician.

8. There is substantial and credible evidence in this matter that the petitioner is limited by chronic pain from lifting only items weighing less than 10 lbs., is restricted from bending, and cannot stand, sit or walk for more than 30 minutes at a time without exacerbating her constant low back pain or putting pressure on her knees and ankles. The stiffness, swelling and pain have not been particularly alleviated by medicine.

ORDER

The decision of the Department is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The petitioner is unable in her present condition to do even sedentary work which is described in the regulations as follows:

(a) Sedentary work.

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 C.F.R. § 416.967(a)

It must be concluded that the petitioner's impairment is of a severity which either meets or equals the listings

for Musculoskeletal Impairments at 20 C.F.R. § 404, Subpart P, Appendix 1, Regulation 1.00. As the petitioner's condition has been found to meet or equal the listings, the petitioner must be found to be disabled without regard to her age, education or work experience. 20 C.F.R. § 416.920 (d)

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